

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Michael A. McClanahan,)	C/A No.: 4:06-2301-JFA-TER
)	
Petitioner,)	
v.)	ORDER
)	
South Carolina Department of Corrections;)	
Colie Rushton, Warden of McCormick)	
Correctional Institution; and Henry McMaster,)	
Attorney General of South Carolina,)	
)	
Respondents.)	
_____)	

The *pro se* petitioner, Michael A. McClanahan, is currently in the custody of the South Carolina Department of Corrections (SCDC). He has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 contending that his motion for reconsideration, which he filed in state court in September 1999, has not been heard and he seeks relief from “extreme delay.”

The Magistrate Judge assigned to this action¹ has prepared a comprehensive Report and Recommendation wherein he suggests that the respondents’ motion for summary

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

judgment² be granted and the action be dismissed without prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on May 17, 2007. He did not file objections³ to the Report.

In their motion for summary judgment, the respondents first contend that the since the filing of the § 2254 petition, the petitioner's motion to reconsider has been adjudicated by the state court. The Magistrate Judge correctly suggests that respondents' motion should be granted because the issue first presented is now moot and petitioner has been granted the relief sought.

After carefully reviewing the applicable law, the record in this case, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

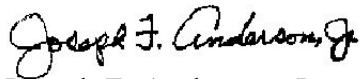
³ Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

Report by specific reference.

Accordingly, the respondents' motion for summary judgment is granted.

IT IS SO ORDERED.

June 12, 2007
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge